Remarks

Claims 34-36 and 74-76 have been amended. New dependent claims 80 and 81 have been added. Claims 34-36, 38 and 40-41, and 74-81 are pending upon entry of the Reply and Amendment.

Applicants respectfully note that the Examiner has renumbered claims 74-79 (page 2 of Office action) but does not appear to have explicitly rejected claim 74 (Office action Summary and page 3 of Office action).

Applicants understand that all pending claims stand rejected and that the First Office action has been made final. Applicants thank the Examiner for taking the time to conduct a telephone interview on Friday, August 24. During the telephone interview, Applicants requested withdrawal of the finality of the Office action. The Examiner indicated that he would not withdraw the finality of the Office action but would examine and enter the Reply and Amendment if made according to the Examiner's suggestion. Applicants believe the Amendment is in accordance with the Examiner's suggestion and language agreed upon in the telephone interview.

The Examiner suggested on June 29, 2007, "indicating the energy is stopped during the interval . . . in order to overcome this rejection." Office action at page 3. Following the telephone interview of August 24, 2007, Applicants understand that agreement has been reached with the Examiner on an Amendment to add "activating the ablating element after the determining step is completed" to the independent claims. Applicants also understand that the claim language added after discussion of the Examiner's suggestion would define over the art currently cited. However, if the Examiner finds that the Amendment will still not define patentable subject matter in general, then Applicants respectfully request that the Examiner contact their representative by telephone.

Applicants have amended independent claims 34 and 74 to include "activating the ablating element after the determining step is completed."

Support for the amendments to claims 34 and 74 is found in the specification as a whole and, for example, page 34, line 3 - page 36, line 5 of Applicants' specification as filed on February 18, 2000. The specification notes that when assessing the temperature response, the amount of energy delivered to the tissue at that time may be used to characterize the tissue (page 35, lines 25-27). The temperature response and tissue characterization steps are described on page 35, lines 4-27. Ablation, which stops after a predetermined time interval, is described at page 35, line 30 to page 36, line 3. Support for new claims 80 and 81 is found on page 35, line 5 of Applicants' specification as filed. All references to the specification in this document are to the application as filed.

No new matter is introduced by these amendments.

Rejections under 35 U.S.C. § 103(a)

Claims 34-38 and 40 and 75-88 stand rejected as obvious over Rittman in combination with Swanson.

In the Office action of June 29, 2007, the Examiner alleges Applicants' previous amendment "does not define over the actual process occurring during the operation of the device of Rittman, III, et. al." Office action at page 2.

In accordance with the Examiner's suggestion (Office action at page 3), Applicants have amended claims 34 and 74 to make it clear that "activating the ablation element [occurs] after the determining step is completed." No new matter is introduced by these amendments. As noted above, the specification recites that when assessing the temperature response, the amount of energy delivered to the tissue at that time may be used to characterize the tissue (page 35, lines 25-27). The temperature response and tissue characterization steps are described on page 35, lines 4-27. Ablation, which

stops after a predetermined time interval, is described at page 35, line 30 to page 36, line 3.

Applicants submit that the distinct temperature measuring step in the claims as amended is neither taught nor suggested by Rittman or Swanson. Therefore, claims 34-36, 38, 40 and 74-88 are patentable over the cited combination.

Claim 41 and 73 stand rejected as obvious over Rittman in combination with Swanson and further in view of Ben Haim.

As noted above, Applicants have amended claims 41 and 73 to make it clear that that "activating the ablation element [occurs] after the determining step is completed." Since Ben Haim does not teach or suggest a "temperature measurement" step distinct from the ablation step, claims 41 and 73 are patentable over the additional Ben Haim reference. The rejection based on obviousness should be withdrawn.

Applicants request withdrawal of the Examiner's rejections and submit that the application is in condition for allowance. Timely notification of allowability is requested.

Applicants believe this response is timely filed on the two month date from mailing of the Office action. No additional fees, requests for extension of time, other petitions, additional claim fees, or any other fees are believed to be necessary to enter and consider this paper. If, however, any extensions of time are required or any fees are due in order to enter or consider this paper or enter or consider any paper accompanying this paper, including fees for net addition of claims, Applicants hereby request any extensions or petitions necessary and the Commissioner is hereby authorized to charge our Deposit Account No. 50-1129 for any fees. If there is any variance between the fee submitted and any fee required, or if the payment or fee payment information has been misplaced or is somehow insufficient to provide payment, the Commissioner is hereby authorized to charge or credit Deposit Account No. 50-1129.

Respectfully submitted,

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Date: August 29, 2007

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